

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

No. 4:07CR655 RWS

JIMMY DALE SMITH,)

Defendant.)

ORDER

This matter is before the Court on defendant Jimmy Dale Smith's Response to Report and Recommendation of United States Magistrate Judge.

Defendant Jimmy Dale Smith's Motion to Suppress Evidence was referred to United States Magistrate Judge Audrey G. Fleissig pursuant to 28 U.S.C. § 636(b). Judge Fleissig conducted an evidentiary hearing on February 27, 2008. The parties filed post hearing memoranda.

Upon my *de novo* review of Judge Fleissig's Report and Recommendation, the evidentiary hearing and the relevant case law I concur with Judge Fleissig's Report and Recommendation.

Specifically, I find that the encounter between Jimmy Dale Smith and law enforcement officers was a consensual encounter. I also find that the Defendant's

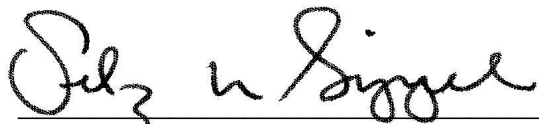
statements to the officers were voluntary. Finally, The search of the vacant upstairs apartment and the seizure of the firearm did not violate defendant's constitutional rights.

Accordingly,

IT IS HEREBY ORDERED that United States Magistrate Judge Audrey G. Fleissig's Report and Recommendation filed March 18, 2008 [#24] is **SUSTAINED, ADOPTED, and INCORPORATED** herein.

IT IS FURTHER ORDERED that defendant's motion to suppress evidence and statements [#19] is denied.

IT IS FINALLY ORDERED that this matter is set for a **final pretrial conference** on **Friday, May 30, 2008 at 11:00 a.m.** and the **jury trial** is reset to **Monday, June 9, 2008 at 9:00 a.m.**

A handwritten signature in black ink, appearing to read "Rodney W. Sippe", written over a horizontal line.

RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 27th day of May, 2008.